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Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 87-917

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

MONTE LEE POST, Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent, and

BETTY A. JAMES, (Formerly, BETTY A. POST)
Real Party in Interest.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES
and
MOTION TO VACATE JUDGMENT BELOW

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(PETITIONER IN PRO SE)

BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. Whether due process and equal protection will permit a superior court to first issue and unlawful order giving the plaintiff in a civil action control of a state prisoner's assets; and then refusing to release a portion of those assets to the state prisoner so he can retain counsel; and then refusing to appoint counsel for the state prisoner for his defense, by declaring him non-indigent; and then compelling the state prisoner, who is not a trained attorney, to defend himself in the civil action, against a fully trained attorney for the plaintiff?

2. Whether a judgment against a state prisoner defendant in a civil action is void under due process and equal protection, when there was no summons ever issued or served on the defendant, and where there is evidence

pointing to the actual and constructive fraud used to obtain the judgment in the first instance?

3. Whether due process and equal protection will permit a superior court to summarily deny a defendant's Motion to Vacate Judgment, without hearing the defendant's evidence of the actual and constructive fraud used to obtain the judgment in the first instance?

4. Whether when a state establishes appellate review procedures for the review of federal Constitutional questions by way of extraordinary writs, that a summary denial of such review, when the appellant has no other plain, speedy, or adequate remedy, is in violation of the due process and equal protection clauses?

LIST OF PARTIES

All parties in the Superior Court of the State of California, for the County of Los Angeles, Case No. N.O.C.-3684, are listed in the caption.

However, the following Judges of the respondent court, and one person acting under appointment, are being provided copies of this petition:

Honorable, Thomas Schneider, Judge

Honorable, Martha Goldin, Judge

Honorable, Robert M. Letteau, Judge

Lee Kanon Alpert, Attorney at Law, (Special Master acting under appointment by Judge Robert M. Letteau, in Superior Court, Case No. N.O.D.-10783).

Copies are also being provided to the Clerks of the respective California Supreme Court and the California Court of Appeal.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

MONTE LEE POST, PETITIONER,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY, RESPONDENT, and

BETTY A. JAMES, (Formerly, BETTY A. POST) Real Party in Interest.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES
and
MOTION TO VACATE JUDGMENT BELOW

==========

Petitioner, Monte Lee Post, hereby respectfully petitions this Court for a Writ of Certiorari to review the judgment of the Superior Court of the State of California, in and for the County of Los Angeles in this case, and moves this Court for an order to vacate said judgment, on the grounds that said judgment was obtained in violation of Petitioner's Consitutional rights of due process and equal protection of the law.

OPINIONS BELOW

1. There was no formal opinion by the superior court, either written or oral, only the court's announcement of its tentative decision. [App. A, pp. 1a-4a, infra].

2. There was no opinion by the superior court's law and motion judge on the merits of the federal questions presented in Petitioner's MOTION TO VACATE JUDGMENT, No. N.O.C.-3684, just the court's minute order of denial. [App. A, p. 5a, infra].

3. The was no opinion by the California Court of Appeal on the merits of the federal questions presented in Petitioner's direct appeal, No. 2D CIVIL B-020858, just an order dismissing the appeal. [App. B, pp. 6a-8a, infra].

4. There was no opinion by the California Court of Appeal on the merits of the federal questions presented in

Petitioner's PETITION FOR WRIT OF CERTIORARI AND/OR WRIT OF PROHIBITION AND/OR WRIT OF MANDATE, WITH SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES, No. 2D CIVIL B-028776, just the court's order of denial. [App. B, p. 9a, infra].

5. There was no opinion by the California Supreme Court on the merits of the federal questions presented in Petitioner's PETITION FOR REVIEW; MEMORANDUM OF POINTS AND AUTHORITIES, No. S-001859, just the court's order of denial. [App. B, p. 10a, infra].

JURISDICTION

1. The judgment of the Superior Court of the State of California, in and for the County of Los Angeles, in its Case No. N.O.C.-3684, sought to be reviewed by this Court, was entered on August 3, 1983, and is set forth in Appendix C, pp. 11a-12a, infra.

2. On September 2, 1983, Petitioner filed a timely notice of appeal. [App. B, p. 7a, fn. 1, infra]. However, Petitioner abandoned that appeal upon the discovery of a then recent California Appellate Court decision in Fox Indust. Realty v. Dio Dix, Inc., 136 Cal.App. 787, 790-791 [186 C.R. 449] (1982), which seemed to mandate that Petitioner first file a motion to vacate the judgment before seeking an appeal, which Petitioner did. (Ex. "A", C.T., pp. 163, 165, B-028776).

3. On January 27, 1986, after

several continuances, Petitioner's motion to vacate the judgment was denied. (Ex. "A", C.T., p. 394, B-028776) [App. A, p. 5a, infra].

4. On February 24, 1986, Petitioner filed a second notice of appeal, therein appealing the original judgment and the court's summary denial of Petitioner's motion to vacate the judgment. (Ex. "A", C.T., pp. 397-398, B-028776). The issues presented on Petitioner's direct appeal are set forth in Appendix D, pp. 25a-29a, infra.

5. On June 18, 1987, the California Court of Appeal dismissed Petitioner's direct appeal for lack of jurisdiction. [App. B, pp. 6a-8a, infra].

6. On July 16, 1987, Petitioner filed an application for extraordinary writs of certiorari, prohibition, and/or mandate in the California Court of Appeal, in that court's number 2D CIVIL

B-028776, in which case all the exhibits referred to herein appear; and which application sought to have the federal questions presented herein reviewed by that court. The federal questions presented thereto are set out in Appendix D, pp. 30a-31a, infra.

7. On July 24, 1987, the California Court of Appeal denied Petitioner's application without any opinion. [App. B, p. 9a, infra].

8. On August 3, 1987, Petitioner filed his PETITION FOR REVIEW; MEMORANDUM OF POINTS AND AUTHORITIES in the California Supreme Court, in its number S-001859. The federal questions presented thereto are set out in Appendix D, pp. 33a-36a, infra.

9. On September 16, 1987, the California Supreme Court filed its ORDER DENYING REVIEW AFTER JUDGMENT BY THE COURT OF APPEAL, 2nd District, Division

2, No. B-028776, without any opinion on the merits of the federal questions presented thereto. [App. B, p. 10a, infra].

10. The jurisdiction of this Court is invoked under Title 28 U.S.C., section 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

1. The Fifth Amendment to the United States Constitution provides in relevant part:

> "No person shall.....be deprived of life, liberty, or property, without due process of law ....."

2. Section 1, of the Fourteenth Amendment to the United States Constitution provides in relevant part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE FROM A STATE COURT

1. Proceedings in the Los Angeles County Superior Court:

During all proceedings in the superior court, Petitioner had never knowingly or willingly waived any federal Constitutional rights, and had consistently sought a trial by jury. (Ex. "B", R.T., pp. 9, 38-39, "PETITION FOR WRIT OF CERTIORARI AND/OR WRIT OF PROHIBITION AND/OR WRIT OF MANDATE, WITH SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES", No. B-028776, filed in the California Court of Appeal. Henceforth referred to as: Ex. "_", being the Exhibits; C.T., being the Clerk's Transcript; and R.T. being the Reporter's Transcript of the superior court proceedings, filed with Petitioner's application, 2D CIVIL NO. B-028776, filed in the California Court of Appeal, Second Appellate District).

On August 3, 1981, the Real Party in Interest filed a complaint for damages (assault and battery) against Petitioner in Los Angeles County Superior Court, Case No. N.O.C.-3684. (Ex. "A", C.T., pp. 1-4, B-028776).

There was no summons issued by the superior court, nor is there a proof of service of the summons and complaint in the record. (Ex. "A", C.T., B-028776).

On October 13, 1981, Petitioner's criminal counsel filed an answer to the complaint. (Ex. "A", C.T., pp. 6-8, B-028776).

Petitioner was never informed by the criminal counsel, that Petitioner did not have to answer the complaint until such time as a proper summons and complaint was served on Petitioner.

On July 6, 1982, Petitioner was incarcerated in the Los Angeles County Jail on a charge of assault with a deadly

weapon, the same transaction from which the civil action stemmed in the Los Angeles County Superior Court. It was during this incarceration, and subsequent to Petitioner's release, that Petitioner started discovering the facts of the denial and violations of Petitioner's Constitutional rights.

On July 12, 1982, Petitioner's criminal counsel had Petitioner sign a Substitution of Attorney. (Ex. "D", C.T., pp. 84-85, B-028776).

On July 19, 1982, the civil action was transferred from the North Valley Judicial District to the Northwest Judicial District, because Petitioner would not sign a stipulation for the matter to be heard by a court commissioner. (Ex. "A", C.T., p. 36, B-028776).

On July 20, 1982, a superior court commissioner issued an order giving

control of all of Petitioner's assets to the plaintiff in the civil action against Petitioner, without a stipulation having been signed by Petitioner on that date. (Ex. "D", C.T., pp. 87-91, B-028776).

On August 9, 1982, Petitioner's prior criminal counsel had Petitioner sign a stipulation that covered the actions of the superior court commissioner on July 20, 1982. (Ex. "D", C.T., pp. 92-96, B-028776). This was the same attorney who had Petitioner execute the Substitution of Attorney on July 12, 1982. (Ex. "D", C.T., pp. 84-85, B-028776).

On August 13, 1982, Petitioner was removed from the Los Angeles County Jail and transferred to the custody of the California Department of Corrections. (Ex. "A", C.T., p. 276, B-028776).

From September 23, 1982 through February 8, 1984, Petitioner was being

transported up and down the state of California, for various superior court civil proceedings. (Ex. "A", C.T., p. 276-277, B-028776).

On December 14, 1982, Petitioner was taken from the Los Angeles County Jail to the Los Angeles County Superior Court by Los Angeles County Sheriff's deputies. (Ex. "A", C.T., pp. 44, 276, B-028776).

On December 14, 1982, Petitioner requested a certain portion of his own funds to be released to Petitioner for legal fees and to retain counsel. The plaintiff's counsel and the master calender superior court judge refused Petitioner's request. (Ex. "C", R.T., pp. 5-6, 11, B-028776). [App. D, pp. 13a-15a, infra].

Petitioner's appearance for the mandatory settlement conference in the civil action on December 14, 1982, and all subsequent appearances in the civil

action, were obtained by court orders issued on sworn affidavits by the plaintiff's civil action counsel's associate, who was the plaintiff's counsel in the superior court's marital dissolution Case No. N.O.D.-10783, without notice to Petitioner in the civil action. (Ex. "A", C.T.; Ex. "D", C.T., pp. 121-122, B-028776).

On March 28, 1983, Petitioner filed a motion to continue the civil action until after Petitioner's release from prison and/or for the superior court to appoint counsel for Petitioner's defense. (Ex. "A", C.T., pp. 46-50, B-028776).

On April 18, 1983, Petitioner was again taken from the Los Angeles County Jail to the Los Angeles County Superior Court by Los Angeles County Sheriff's deputies. (Ex. "A", C.T., pp. 66, 276, B-028776).

On April 18, 1983, the same master

calender superior court judge who refused Petitioner access to Petitioner's own funds on December 14, 1982, refused to appoint counsel for Petitioner's defense in the civil action, by ruling that Petitioner was non indigent. The judge also refused to continue the action until after Petitioner's release from prison. The judge's ruling on Petitioner's indigence was made without making any written statement detailing the court's reasons for its denial of Petitioner's indigent status, pursuant to the provisions of California Government Code, section 68511.3(a). Nor did the judge determine whether Petitioner could adequately and effectively defend himself, or advise Petitioner that Petitioner could assign a portion of his assets to retain counsel. Assets which the judge knew were under the control of the plaintiff against Petitioner. (Ex.

"A", C.T., p. 49; Ex. "C", R.T., pp. 5, 6, 11, 20, B-028776). [App. D, pp. 13a-16a, infra].

The "order" supposedly issued for Petitioner's appearance on April 18, 1983, does not appear in the record. (Ex. "C", R.T. 16; Ex. "A" C.T.; Ex. "D", C.T., B-028776). [App. D, p. 17a, infra].

Also, Sherman Juster was not a superior court judge, but instead was a court commissioner, and Petitioner had not signed a stipulation conferring jurisdiction on Commissioner Juster, after the case had been transferred from the North Valley Judicial District to the Northwest Judicial District. (Ex. "A", C.T., p. 36, B-028776).

On June 10, 1983, Petitioner filed a motion to file a cross-complaint and to amend Petitioner's answer, which was set for hearing on June 29, 1983. (Ex. "A", C.T., pp. 88-96, 76-87, 71-75, B-028776).

On June 24, 1983, Petitioner was taken from the Los Angeles County Jail to the Los Angeles County Superior Court for trial, by Los Angeles County Sheriff's deputies. (Ex. "A", C.T., pp. 106, 276; Ex. "B", R.T., p. 6, B-028776).

During the proceedings on June 24, 1983, Petitioner advised the trial judge that Petitioner had only been allowed 72 hours [of law library time] in which to prepare. (Ex. "B", R.T., p. 12, B-028776).

Also on June 24, 1983, was the first time that Petitioner had been informed by any superior court judge, that Petitioner had a right to assign a portion of Petitioner's assets to retain counsel, or to obtain expert witnesses. (Ex. "B", R.T., pp. 19-20, 30, B-028776) [App. D, p. 20a, infra]. When Petitioner asked the trial judge if Petitioner could sign a promissory note to an attorney the

judge refused. (Ex. "B", R.T., pp. 43-44, B-028776) [App. D, pp. 20a-21a, infra].

During the trial, on June 24, 1983, the trial judge sought to have Petitioner waive any objections on the basis of due process, on the basis of lack of counsel, lack of funds to retain counsel, lack of funds to obtain expert or other witnesses, and submit without any objections of any other sort, in exchange for having Petitioner's criminal trial transcript entered into evidence on Petitioner's behalf. (Ex. "B", R.T., pp. 38-39, B-028776). [App. D, pp. 22a-23a, infra].

On June 27, 1983, Petitioner moved for a mistrial on the grounds of the denial of due process and equal protection, which was denied. (Ex. "B", R.T., p. 45, B-028776). [App. D, p. 24a, infra].

On June 29, 1983, Petitioner's

motion to file a cross-complaint and to amend his answer was denied. (Ex. "A", C.T., p. 116, B-028776). At this point the motion had effectively been rendered moot because of the preceding trial.

On August 3, 1983, the superior court filed its judgment against Petitioner. (Ex. "A", C.T., pp. 123-124, B-028776). [App. C, pp. 11a-12a, infra].

On August 8, 1983, Petitioner wrote a letter to the California Court of Appeal indicating Petitioner's intent to appeal the civil judgment, which was filed on September 2, 1983, as Petitioner's Notice Of Appeal. (Ex. "A", C.T., p. 130-132, B-028776).

On February 3, 1984, Petitioner was granted permission to proceed informa pauperis on appeal, with Petitioner having submitted the same financial data that Petitioner previously submitted to the superior court, upon which Petitioner

was denied indigent status for the appointment of counsel. (Ex. "A", C.T., p. 155, B-028776).

Because the superior court's form B-390 is considered confidential, it does not appear in the record.

On February 24, 1984, shortly after Petitioner discovered a California Appellate Court case, Petitioner filed a Voluntary Abandonment of Appeal, based upon the decision in Fox Indust. Realty v. Dio Dix, Inc. 136 C.A.3d 787, 790-791 (1982), which held that a party must first give the superior court a chance to correct its judgment before seeking an appeal. (Ex. "A", C.T., p. 165, B-028776).

On February 24, 1984, Petitioner had plaintiff's counsel served with copy of Petitioner's Notice of Motion to Vacate Judgment. (Ex. "A", C.T., pp. 163, 177, B-028776).

On March 8, 1984, Petitioner received a memorandum from a superior court deputy clerk stating that the superior court did not have jurisdiction. (Ex. "J", B-028776).

On March 13, 1984, Petitioner's Notice of Motion and Motion to Vacate Judgment was filed. (Ex. "A", C.T., p. 163-177, B-028776).

On April 3, 1984, the superior court continued Petitioner's motion to vacate judgment, without any opposition having been filed by the plaintiff, pursuant to California Code of Civil Procedure, section 1005. (Ex. "A", C.T., pp. 180, B-028776).

During the period from April 3, 1984, until January 27, 1986, Petitioner's Motion to Vacate Judgment was continued both on the courts' own motion and on Petitioner's applications for continuances.

On January 27, 1986, Petitioner's Motion to Vacate came on calender; and which proceedings, the law and motion judge refused to have reported. (Ex. "M", p. 2, B-028776). During the unreported proceedings, Petitioner informed the law and motion judge of the provisions of Rule 236, of the California Rules of Court. (Ex. "M", p. 2, B-028776). However, after the trial judge had informed the law and motion judge that the trial judge could hear the motion the next day, the law and motion judge refused to transfer the motion back to the trial judge, instead the law and motion judge summarily denied Petitioner's motion. (Ex. "A", C.T., p. 394; Ex. "M", pp. 1-3, B-028776).

2. Proceedings on Direct Appeal:

On February 24, 1986, less than 30 days after the law and motion judge denied Petitioner's motion, Petitioner

filed a new Notice of Appeal from the superior court's civil judgment and its summary denial of Petitioner's Motion to Vacate Judgment. (Ex. "A", C.T., p. 397-398, B-028776).

Petitioner's briefs to the appellate court contended inter alia that: (1) the law and motion judge, acted in excess of jurisdiction in refusing to transfer appellant's motion to vacate the judgment back to the trial judge; and without jurisdiction, in denying appellant's motion to vacate judgment; and denied appellant due process thereby; and (2) the judgment against appellant was obtained by extrinsic fraud, and the denial of appellant's fundamental constitutional right to due process and equal protection, and a trial by jury. [App. D, pp. 25a-29a, infra].

On June 18, 1987, the California Court of Appeal, dismissed Petitioner's

direct appeal for lack of jurisdiction, because Petitioner had previously abandoned his first direct appeal. [App. B, pp. 6a-8a, infra].

3. Proceedings on application for extraordinary writs:

Thereafter, on July 16, 1987, Petitioner applied to the California Court of Appeal, Second Appellate District for writs of certiorari, and/or prohibition and/or mandamus, which incorporated essentially the same federal contentions as Petitioner made on his direct appeal, and which contentions were presented in Petitioner's Memorandum of Points and Authorities, filed in the petition in that court's, 2D CIVIL NO. B-028776.

The California Court of Appeal denied that application on July 24, 1987. [App. B, p. 9a, infra].

Thereafter, on August 3, 1987,

Petitioner applied to the California Supreme Court for a petition for review of the California Court of Appeals summary denial of Petitioner's application for the extraordinary writs. (S-001859). The questions presented to the California Supreme Court are set forth in Appendix D, pp. 31a-34a, infra.

The California Supreme Court denied that application on September 16, 1987. [App. B, p. 10a, infra].

REASONS FOR GRANTING THE PETITION

This case presents important federal questions of Constitutional due process and equal protection rights, which the state courts have decided in a way that is in direct conflict with applicable decisions of this Court, and even the state's own precedent case law.

As a result, Petitioner will be held liable because Petitioner was a state prisoner who was denied access to his own funds to retain counsel for his defense; and because Petitioner was not a trained attorney, who could adequately and effectively defend himself by presenting the factual and legal issues for proper judicial consideration; and further because the superior court would not appoint counsel for Petitioner's defense, so that Petitioner could be adequately, effectively, and meaningfully heard.

The California Supreme Court has

effectively held that Petitioner was not entitled to the protection of the United States Constitution, by refusing to decide the merits of the federal Constitutional due process and equal protection questions presented to that court.

This unprecedented ruling seriously misconstrues this Court's decisions in Armstrong v. Manzo, 380 U.S. 545 (1965), Boddie v. Connecticut, 401 U.S. 371 (1971), and Fuentes v. Shevin, 407 U.S. 67 (1972), regarding the due process clause requirement that deprivation of life, liberty, or property by adjudication be preceded by notice and an opportunity for hearing appropriate to the nature of the case.

Because of this state court's unprecedented ruling, review of the judgment below is essential.

LEGAL ARGUMENT

CONTENTIONS RELATIVE TO QUESTION NO. 1

The Fifth and Fourteenth Amendments of the United States Constitution do not differentiate between life, liberty or property rights, which therein commands the same due process and equal protection. United States Constitution, Amendments Five and Fourteen. Although the Sixth Amendment commands that a criminal defendant be afforded assistance of counsel, there appears to be no prohibition against the appointment of counsel in civil matters, in order to protect an indigent civil defendant's right to be adequately, effectively, and meaningfully heard, where the defendant's property rights are at stake. Bounds v. Smith, 430 U.S. 817, 822 (1977).

In light of this Court's directive in Armstrong, supra, 380 U.S. at 552, regarding [a defendant's] due process

rights, that the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner" (380 U.S. 552), and the Court's other relevant decisions, in Bounds, supra, regarding decisions to "insure that inmate access to the courts is adequate, effective, and meaningful." (430 U.S. at 822-824); in Montana v. United States, 440 U.S. 147 (1979), regarding a "full and fair opportunity" to have the issues litigated (440 U.S. at 153); and in Gardner v. State of California, 393 U.S. 367, (1969), where the Court acknowledged that "[w]e deal with an adversary system..." (393 U.S. at 369, 370), Petitioner contends that neither his civil trial, nor the superior court's summary denial of Petitioner's Motion to Vacate Judgment complied with those principles. See also: Payne v. Superior Court of Los Angeles County, 17 C.3d 908, 909 [132 C.R. 405, 553 P.2d

565] (1976).

Petitioner's premise is based upon the following:

First, Petitioner contends that the trial court actually lacked personal jurisdiction over Petitioner in the first instance, where the superior court had never issued a summons and there is no proof of service of a summons and complaint on Petitioner in the record. The record also fails to show that Petitioner had ever made a knowing and willingly waiver of his fundamental right to notice. A fundamental right made obligatory on the state by the United States Constitution. United States Constitution, Fifth & Fourteenth Amendments; Cf. U.S. v. U.S. Fidelity & Guaranty Co., 309 U.S. 506, 513-514 (1940).

Second, when Petitioner's criminal counsel filed an answer prior to proper

service of a summons and complaint, his action was contrary to the protection of Petitioner's fundamental due process right to proper notice. United States Constitution, Fifth Amendment; Armstrong, supra, 380 U.S. at 550. And for that counsel to have filed an answer with the affirmative defenses of contributory and comparative negligence to an intentional tort, would indicate that said counsel was not prepared or even going to protect Petitioner's rights. (Ex. "A", C.T., pp. 6-7, B-028776). United States v. Throckmorton, 98 U.S. 61, 65-66 (1878).

Third, when the superior court commissioner issued the order giving control of all of Petitioner's assets to the plaintiff on July 20, 1982, (Ex. "D", C.T., p. 87, B-028776), the commissioner was without any jurisdiction to do so, because Petitioner had not signed a stipulation at that time. Rooney v.

Vermont Invest. Co., 10 Cal.3d 351, 360 [110 C.R. 353, 515 P.2d 297] (1973);

Fourth, then to have Petitioner's former criminal counsel come back to the proceedings, in order to get Petitioner to sign the August 9, 1982, stipulation (Ex. "D", C.T., pp. 92-95), that covered the prior unlawful order of the court commissioner, is another indication that said counsel was not about to protect Petitioner's rights, but was instead an indication of his intent to protect the court and the plaintiff in this case. Because of this activity by Petitioner's former criminal counsel, this Court should not presume any acquiesence of Petitioner's rights or privileges, without a showing in the record, that Petitioner was not under the duress of his incarceration, or had made an informed decision, when Petitioner signed the stipulation on August 9, 1982.

Johnson v. Zerbst, 304 U.S. 458, 464 (1938); U.S. v. Throckmorton, supra, 98 U.S. at 65-66.

Fifth, when there was no indication from the judge who denied Petitioner appointed counsel, that Petitioner had any way of obtaining counsel. On the contrary, that judge made it quite clear that Petitioner had to have a full trial before Petitioner could have the court release any funds to Petitioner for anything. [App. D, p. 15a, infra];

Sixth, when the judge who denied Petitioner appointed counsel, by merely declaring Petitioner non-indigent [App. D, p. 18a, infra], he did so without complying with the provisions of the California Government Code. The California Government Code requires that a written statement be made as to the reasons for not granting indigence status. California Government Code,

section 68511.3; Earls v. Superior Court, 6 Cal.3d 109, 115 [89 C.R. 302, 490 P.2d 814] (1971); Cf. Payne, supra, 17 Cal.3d at 917-918, 923-924. There is no such written statement in the record.

Seventh, both the judge, who denied Petitioner appointed counsel, and the trial judge, knew or reasonably should have known, that Petitioner, who was a state prisoner at the time [App. D, p. 16a, infra], was not a trained attorney, who could adequately, effectively, and meaningfully make himself heard in his own defense against a fully trained attorney, in an adversary confrontation.

Furthermore, neither judge made any attempt to determine whether Petitioner could make himself adequately, effectively and meaningfully heard to defend himself. Armstrong, supra, 380 U.S. at 552; Bounds, supra, 430 U.S. at 822. Both judges also reasonably knew

that Petitioner had been denied access to his own assets, which the plaintiff then controlled. (Ex. "A", C.T., p. 49; Ex. "D", C.T., pp. 87, B-028776) [App. D, p. 16a]. And because of that control and denial of access thereto, Petitioner was foreclosed from obtaining and paying expert witnesses, in Petitioner's defense, without being advised that he could assign his assets, until the case was already at trial. (Ex. "B", R.T., pp. 19-20, B,028776), [App. D, p. 20a, infra]. Witnesses, who had testified to Petitioner's unconscious[1/] condition at the time of the plaintiff's injury during Petitioner's criminal trial.

1/ However, that evidence was precluded from the jury's consideration because the criminal trial judge refused Petitioner's requested defense instruction on unconsciousness, CALJIC 4.30, which is now pending review in the 9th Circuit.

Evidence, that could well have negated the intent element of the assault and battery claim. [App. D, pp. 22a-23a, infra]. Lindsey v. Normet, 405 U.S. 56, 66 (1972).

Eighth, then to have the trial judge deny Petitioner from having other defense evidence entered, because Petitioner would not waive his rights. (Ex. "B", R.T., pp. 38-39, B-028776). [App. D, pp. 21a-22a, infra]. Lindsey, supra, 405 U.S. at 66; and

Ninth, then having the superior court summarily deny Petitioner's Motion to Vacate Judgment, without a hearing, which effectively precluded Petitioner from presenting his evidence of the due process and equal protection issues and the actual and constructive fraud used to gain Petitioner's appearances for the civil action. Appearances which were gained without notice to Petitioner. (Ex.

"D", C.T., pp. 119-122, B-028776). California Code of Civil Procedure, sections 1003, 1005, 1995 & 1996; Armstrong, supra, 380 U.S. at 550.

In conjunction with the aforementioned, this Court has previously ruled that the state has the burden of demonstrating a compelling state interest to justify their infringement of denying Constitutional rights; and the state action can be upheld only if necessary to effect an overriding governmental interest in denying those rights. United States Constitution, Fifth & Fourteenth Amendments; Shapiro v. Thompson, 394 U.S. 618, 633, 634, 638 (1969); Payne, supra, 17 Cal.3d at 914, 919.

It is Petitioner's contention that in this case there was no state interest being protected, instead the state had interjected itself into the protection of one party's interest, as opposed to that

of both parties. And contrary to the equal protection clause of the United States Constitution. Police Dept. of Chicago v. Mosley, 408 U.S. 92, 95 (1972); Reitman v. Mulkey, 387 U.S. 369, 380 (1967); Cf. Lee v. Habib, 424 F.2d 891, 898-902 (D.C. App. 1970).

In this case, the superior court had two viable non-prejudicial options that could well have precluded the abridgment of Petitioner's rights of due process and equal protection.

The first being, to have continued the trial until after Petitioner's release from prison. A time when Petitioner could have more adequately, effectively, and meaningfully been heard and defended himself.

The second being, to have appointed a competent counsel for Petitioner's defense, so that Petitioner could have been adequately, effectively, and

meaningfully heard. Armstrong, supra, 380 U.S. at 552; Boddie, supra, 401 U.S. at 377; Bounds, supra, 430 U.S. at 822; Payne, supra, 17 C.3d 914, 914, 923-924.

Petitioner further contends that the state cannot show that a continuance of the trial would have been prejudicial to the plaintiff. When in fact the state had already made an order giving the plaintiff control of all the community and quasi property, which included all of Petitioner's assets. (Ex. "D", C.T., p. 87, B-028776). While at the same time, by not continuing the trial, Petitioner was being further prejudiced by having his prison work credits denied without a hearing, because of the court ordered appearances. (Ex. "A", C.T., pp. 271-277, B-028776). Superintendent, M.C.I. v. Hill, et al, 472 U.S. 445, 449 (1985).

Therefore, this Court's decisions regarding "due process" and "equal

protection", strongly supports the conclusion that there was no government interest being protected; and that the lower court's judgment was obtained in violation of those rights in the first instance. Armstrong, supra, 380 U.S. 550, 552; Bounds, supra, 430 U.S. at 822-824; Fuentes, supra, 407 U.S. at 80-82; Boddie, supra, 401 U.S. at 380; Lindsey, supra, 405 U.S. at 66.

Furthermore, the lower court's activities strongly supports the appearance of bias against Petitioner because Petitioner was a state prisoner; and that Petitioner was denied his fundamental due process and equal protection rights before the judgment was entered, because of that status. United States Constitution, Fifth & Fourteenth Amendments; Taylor v. Hays, 418 U.S. 488, 501 (1974); Cf. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291

(1980). Rights, which the state courts were supposedly bound to protect. Mooney v. Holohan, 294 U.S. 103, 113 (1935).

CONTENTIONS RELATIVE TO QUESTION NO. 2

This Court has long established that Constitutional rights cannot be waived without first the party's knowledge that such right exists. Only then can a known right be waived by an intentional relinquishment or abandonment of that right. Johnson, supra, 304 U.S. 464; Fuentes, supra, 407 U.S. at 94, fn. 31.

The record does not reveal that Petitioner ever knowingly or willingly waived his fundamental right to notice. However, the record does show that Petitioner's criminal trial counsel filed an answer to the complaint, before proper notice by service of a summons and complaint was made. (Ex. "A", C.T., pp. 1, 6-8, B-028776). This unwarranted activity by said counsel should not be

presumed as a knowing and willing waiver of Petitioner's fundamental right to notice. United States Constitution, Fifth Amendment; Johnson, supra, 304 U.S. at 464; U.S. v. Throckmorton, supra, 98 U.S. at 65-66.

The record also shows that the same counsel later induced Petitioner to sign a stipulation to cover the unlawful order signed by the court commissioner, after a Substitution of Attorney had been filed removing said counsel from both the marital dissolution case and the civil action case. (Ex. Ex. "D", C.T., pp. 84-85, 87, 92-95; Ex. "A", C.T., p. 33, B-028776). Although, the record does not show the undue influence that counsel used to get Petitioner to sign the stipulation, or the duress under which Petitioner signed the stipulation, those factual issues have not yet been determined by a court of competent juris-

diction. U.S. v. Throckmorton, supra, 98 U.S. at 65-66.

The record also reveals Petitioner had another counsel. But when Petitioner was transferred back north to Susanville, Calif., that counsel did not communicate with Petitioner, which resulted in a conflict of interest between counsel and Petitioner, resulting in that counsel's release. (Ex. "C", R.T., p. 15; Ex. "A", C.T., pp. 51-52; Ex. "C", R.T., pp. 17-18, 20, B-028776).

The record also reveals the ex-parte affidavits, sworn to in the marital dissolution case, used to gain court orders for Petitioner's appearances in the civil action, without notice to Petitioner. Because of those un-noticed orders, Petitioner was then chained up and forcibly brought to the court by L.A. County Sheriff's deputies. (Ex. "D", C.T., pp. 119-122; Ex. "A", C.T., pp.

276-277, B-028776) [App. D, p. 17a]. California Code of Civil Procedure, sections 1003, 1005, 1995 & 1996; In re Edwards, 99 Cal.App. 541, 544 [278 P. 910, 290 P. 591] (1929).

It is Petitioner's contention that such activities point to actual and constructive extrinsic fraud. Extrinsic fraud which was used to gain Petitioner's appearances in order to obtain the judgment against Petitioner. And until a full evidentiary hearing is made into that fraud, the superior court's judgment should not be given full faith and credit elsewhere. Allied Stores of Ohio v. Bowers, 358 U.S. 522, 525 (1959); U.S. v. Throckmorton, supra, 98 U.S. at 65-66; World-Wide Volkswagen Corp., supra, 444 U.S. at 291. Cf. Norris v. Alabama, 294 U.S. 587, 589-590 (1935).

CONTENTIONS RELATIVE TO QUESTION NO. 3

When Petitioner abandoned his first direct appeal from the judgment, and then filed his Motion to Vacate Judgment, Petitioner relied entirely on an appellate court decision, and then predicated Petitioner's motion on the provisions of the California Code of Civil Procedure. Fox Indust. Realty v. Dio Dix, Inc., 136 C.A.3d 787, 790-791 [186 C.R. 449] (1982); California Code of Civil Procedure, section 663. However, when that motion came before the superior court law and motion judge, the law and motion judge refused to transfer the motion back to the trial judge pursuant to the provisions of the California Rules of Court. California Rules of Court, Rule 236. Instead, the law and motion judge summarily denied the motion without a hearing, thereby precluding Petitioner from presenting his evidence of the

extrinsic fraud used to obtain the judgment in the first instance. (Ex. "M", pp. 1-3, B-028776). Lindsey, supra, 405 U.S. at 66.

Petitioner contends that the summary denial of Petitioner's motion to vacate the judgment by the law and motion judge, was contrary to the fair principles of due process and equal protection, where significant property interests were at stake. Armstrong, supra, 380 U.S. at 552; Boddie, supra, 401 U.S. at 378-379; Bounds, supra, 430 U.S. at 822; Fuentes, supra, 407 U.S. 80-82, 90, fn. 22.

CONTENTIONS RELATIVE TO QUESTION NO. 4

In 1927, the California Supreme Court held that an order denying a motion to vacate and enter a different judgment is appealable as a special order made after final judgment. Calif. Delta Farms, Inc. v. Chinese American Farms, Inc., 201 Cal. 201, 203 [255 P. 1097] (1927). In

its decision the court went on to say:

> "Therefore, notwithstanding the obvious fact that on an appeal from a judgment which the court below refuses to set aside, the very same matters may be reviewed, and a reversal can be ordered and the court below directed to enter the judgment which the findings justify, it seems definitely settled that our law gives a separate appeal from an order made by the court on the motion referred to in sections 663 and 663." (citations omitted). (201 Cal. at 203).

The court went on to say:

> "When this course is not pursued there must be an appeal from the judgment, or the sufficiency of the findings to support the judgment cannot be considered. (citation omitted). These sections were not designed to affect the remedy by appeal existing before their enactment, but were intended to provide a remedy in addition thereto." (citation omitted), (emphasis added). (201 Cal. at 203-204).

However, the appellate court dismissed Petitioner's appeal predicated on one of its own decisions. Forman v. Knapp Press, 173 Cal.App.3d 200 [218 C.R. 815] (1985).

In that decision, the appellate

court recognized that there was a perplexing question of stare decisis (173 Cal.App.3d at 202), when motions were made under section 663. The appellate court relied on an incongruous holding by the California Supreme Court in Clemmer v. Hartford Ins. Co., 22 Cal.3d 865, 873, 890 [151 C.R. 285, 587 P.2d 1098] (1978), which did not disapprove or overturn any of its earlier cases on that point. (173 Cal.App.3d at 202). However, this same appellate court district, in a later decision, reiterated that an order denying a motion to vacate a void judgment was appealable as a final order after judgment, if the underlying judgment was appealable. John Siebel Assoc. v. Keele, 188 Cal.App.3d 560, 564, fn. 3 [___ C.R. ___] (1986).

Furthermore, the decision in Forman was an appeal from a summary judgment and not from a court trial, and was therefor

not analogous to Petitioner's case.

It is Petitioner's contention that the appellate court misapplied its own case law and the precedent case law of the California Supreme Court, when it dismissed Petitioner's direct appeal. More particularly, because Petitioner's motion to vacate the judgment was grounded on the denial of due process and equal protection clauses of the United States Constitution, and in fact the judgment below was appealable. (Ex. "A", C.T., pp. 163-164, B-028776) [App. D., p. 24a].

Although, Petitioner lost his direct appeal, predicated on Petitioner's erroneous belief in the state's own appellate court decision in Fox Indust. Realty, supra, 136 C.A.3d at 790-791, which Petitioner tried to comply with (Ex. "A", C.T., pp. 163-170, B-028776), the California Rules of Court had an

established appellate procedure by way of original writ proceedings whereby Petitioner's federal questions could have been resolved. California Rules of Court, Rule 56. The appellate court decision in Fox, supra, in effect lays a very wary trap for similarly situated appellants.

Furthermore, the California Supreme Court had in fact mandated that the lower courts should not decide "constitutional questions", unless "compelled" to do so People v. Marsh, 36 Cal.3d 134, 144 [202 C.R. 92, 679 P.2d 1033] (1984), which appears to be the reason for the appellate court's summary denials of Petitioner's subsequent applications for extraordinary writs.

Therefore, because the state had such an established appellate procedure, other that direct appeal, where it could resolve federal questions in order to protect its citizens rights, Petitioner

contends that when the state courts summarily denied his applications for the extraordinary writs, that was in itself a denial of Petitioner's rights of due process and equal protection. United States Constitution, Fifth, & Fourteenth Amendments; Logan v. Zimmerman Brush Co., 455 U.S. 422, 429-430, fn. 5 (1982); Norris, supra, 294 U.S. at 589-590; Lindsey, supra, 405 U.S. at 77.

Again, rights which the state courts were supposedly bound to protect. Mooney, supra, 294 U.S. at 113.

CONCLUSION

The petition for writ of certiorari should be granted; and the judgment of the superior court vacated.

Respectfully submitted.

/s/ _____
Monte Lee Post, Petitioner
(In pro se)

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Minutes Entered June 28, 1983

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

BETTY A. POST,[1/] Plaintiff v. MONTE LEE POST, Defendant.	CASE NO. N.O.C.-3684 COURT'S ANNOUNCEMENT OF TENTATIVE DECISION

In this matter heretofore submitted on June 27, 1983, the Court hereby announces its tentative decision pursuant to Rule 232(a) California Rules of Court.

After considering all of the documents and oral evidence admitted at the Court trial, the Court announces its tentative decision on this submitted

---

1/ On June 7, 1983, a stipulation was filed to restore Betty A. Post to her former name of Betty A. James. (Ex. D, C.T., p. 165, "PETITION FOR WRIT OF CERTIORARI...", B-028776).

APPENDIX A

matter as follows:

1st DISP CONT The Court will find and conclude as follows:

1) That the plaintiff suffered bodily harm as a proximate result of a battery committed upon her by the defendant and is therefore entitled to recover damages for her injuries from the defendant.

2) The Court further finds that the battery was intentional, unlawful and harmful. See Lopez vs. Surchia 112 Cal App 2d 314; Singer vs. Marks 144 Cal App 2d 637.

3) The Court further finds that the defendant failed to prove any defense to the conduct constituting battery.

4) The Court further finds that the conduct of the defendant was malicious, justifying an award of punitive damages.

APPENDIX A

Judgment will therefore be for the plaintiff BETTY POST, and against the defendant MONTE LEE POST, as follows:

1) Compensatory damages in the sum of $ 70,047.78.

2) Punative damages in the sum of $ 10,000.00.

3) For plaintiff's costs of suit.

If a statement of decision is timely demanded, counsel for plaintiff is ordered to prepare, serve and lodge such proposed Statement of Decision within ten days of receipt of such demand, and in all events counsel for plaintiff is ordered to prepare, serve and lodge a proposed judgment herein within thirty days from this date. A request for a Statement of Decision pursuant to CCP section 632 shall specify those principal controverted issues at trial as to which the party is requesting a Statement of

Decision stated in terms of ultimate facts, not evidentiary facts.

Failure to comply with this requirement shall constitute a waiver of any right to a Statement of Decision.

Thomas Schneider, Judge

APPENDIX A

Minutes Entered January 27, 1986

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

BETTY A. POST,	CASE NO. N.O.C.-3684
Plaintiff	MOTION TO VACATE
v.	JUDGMENT
MONTE LEE POST,	Jan. 27, 1986
Defendant.	Dept. NWC

Nature of Proceeding.

DEFENDANT, MOTION TO VACATE JUDGMENT.

DENIED.

MARTHA GOLDIN, JUDGE

APPENDIX A

NOT FOR PUBLICATION

Filed June 18, 1987

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BETTY A. POST, Plaintiff and Respondent, v. MONTE L. POST, Defendant and Appellant.	NO. B020858 (Super.Ct.No. N.O.C.-3684) ORDER DISMISSING APPEAL

THE COURT*:

[* Roth, P.J., Gates, J., and Fukuto, J.]

By a Notice of Appeal filed February 24, 1986, defendant Monte L. Post purports to appeal from (1) the judgment entered in this proceeding two and a half years earlier, i.e., on August 15, 1983,[1/] and (2) the denial on January

1. Defendant earlier had taken a timely appeal from this judgment on September 2, 1983, but had abandoned it voluntarily on February 24, 1984.

1986 of the "Motion to Vacate Judgment" he had filed on March 13, 1984.

It appeared we lacked jurisdiction in the premises since the challenge to the judgment was untimely (Cal. Rules of Court, rules 2 and 3, subd. (b)), and an order denying a "Motion to Vacate Judgment" of the variety filed here is non-appealable. (Forman v. Knapp Press (1985) 173 Cal.App.3d 200, 203). Consequently, we tendered the parties an opportunity to address the question whether or not this appeal should be dismissed. Their respective responses have now been received and considered, and it remains clear these attempted appeals are beyond our power to consider.

The order of May 26, 1987, placing this matter on calender is vacated and this appeal is dismissed for lack of jurisdiction.

/s/ Roth, P.J.
Gates, J.
Fukuto, J.

APPENDIX B

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APPENDIX D

OFFICE OF THE CLERK

COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
ROBERT N. WILSON, CLERK

DIVISION: 2 DATE: 07/24/87

Monte Lee Post
P.O. Box 4907
San Jose, CA 95150

RE: Post, Monte Lee
VS.
Superior Court Los Angeles County
James, Betty A.
2 Civil B028776
Los Angeles No. NOC3684

THE COURT:

The petition for writ of Certiorari-

Prohibition-Man is denied

APPENDIX B

Filed September 16, 1987

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 2, No. B028776
S001859

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

==========

POST, Petitioner,

v.

SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, Respondent;
JAMES, Real Party in Interest.

==========

Petition for review DENIED.

LUCAS

Chief Justice

APPENDIX B

Filed August 3, 1983

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

BETTY A. POST, Plaintiff, v. MONTE LEE POST, and DOES I through XX, inclusive, Defendants.	CASE NO. NOC 3684 JUDGMENT AFTER TRIAL BY COURT

This cause came on regularly for trial on June 24, 1983, in Department NWY of the above-entitled Court, the Honorable THOMAS SCHNEIDER, Judge presiding, sitting without a jury, a jury having been duly waived; Plaintiff appearing by FRANK G. MICHELIZZI, Esq., a member of COSGROVE, MICHELIZZ, SCHWABACHER, WARD & JACKSON, a Professional corporation, and Defendant

MONTE LEE POST, appearing in Propria Persona; and evidence, both oral and documentary, having been presented by both parties and the cause having been argued and submitted for decision, and a Statement of Decision not having been timely demanded by Defendant:

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiff, BETTY A. POST, have and recover Judgment against Defendant, MONTE LEE POST, as follows:

1. Compensatory damages in the sum of $70,047.78;

2. Punative damages in the sum of $10,000.00;

3. Plaintiff's costs of suit in the sum of $_____;

for a total Judgment of $_____.

DATED: August 3, 1983.

_____
THOMAS SCHNEIDER

Judge of the Superior Court

APPENDIX C

(Ex. "C", R.T., pp. 5-6, B-028776;
Proceedings reported December 14, 1982.)

R.T., p. 5:

THE COURT: What portion are you seeking?

MR. POST: I am asking that Betty be given $10,000 and that I be given $8,000.

THE COURT: Is there a problem with that?

R.T., p. 6:

MR. MICHELIZZI: [actually Mr. Jackson] I would object to the $8,000 being allocated to Mr. Post for a couple of reasons. One is that he has no present need for the income.....

THE COURT: One of the things discussed at our settlement conference was the idea of getting counsel.....

MR. POST: That is the whole idea, your Honor.

THE COURT: I can't see that he

wouldn't be entitled. You are seeking attorney fees on behalf of your client out of the community and he is asked to defend a case without any fees or attorney representing him.....

APPENDIX D

(Ex. "C", R.T., p. 11, B-028776;
Proceedings Reported December 14, 1982.)

R.T., p. 11:

MR. POST: Would that constitute my ability to inquire or to obtain attorney fees out of that?

THE COURT: No, unless you were to get a court order authorizing certain moneys to be released from that fund to you.

MR. POST: By doing this, what you are doing is taking away my ability to get an attorney.

THE COURT: I don't know that we are taking it away. You are not in any better or worse position at this time. The only way I can assume you would have your ability to get a lawyer is if funds are released to you. The only way that will occur is after a full trial.

APPENDIX D

(Ex. "A", C.T., p. 49, B-028776)

DECLARATION IN SUPPORT OF MOTION

I, MONTE L. POST, do declare that I am the defendant in the instant case and that I am indigent prisoner in the State of California.... As a prisoner I have approximately $50.00 in a trust account and approximately $100,000.00 in assets under the care of the Plaintiff and which are in litigation in Superior Court Case No. N.O.D. 10783.

At a hearing on December 14, 1982 on Case No. N.O.D. 10783 in Superior Court Dept. NW A, I requested access to $8000.00 for my use to retain counsel through a stipulation from the Plaintiff and her attorney and was denied. As such I have no other access for funds with which to retain counsel. The N.O.D. Case has not yet resulted in a settlement and I do not know when this may occur.

APPENDIX D

(Ex. "C", R.T., pp. 16, 20, B-028776;
Proceedings reported April 18, 1983.)

R.T., p. 16:

MR. MICHELIZZI: We filed papers in opposition to the motion set for tomorrow for a continuance. I have no objection to the matter being advanced to today's calender.

Is he going to be present today?

THE COURT: I didn't issue any order for him to be transported from prison.

MR. MICHELIZZI: I prepared an order signed by Judge Juster to have him here this morning.

THE COURT: Check with the sheriff to see if he is in the holding tank.

R.T., p. 20:

MR. POST: Your Honor, while I am at Susanville it is very difficult to try to obtain counsel. I have written to two other attorneys in an effort, but now that I am transferred back down here, my

mail has been delayed, I have not had a response from either of those two counsels.

It is unfortunate I think that the last attorney felt, I guess, this was too complex or something. I don't know what the problem was.

THE COURT: At this time the motion for continuance will be denied. The court feels it is only speculative as to when we will ever get to that point.

Secondly, in terms of the request for appointment of counsel, the court does not feel the defendant is indigent within the meaning of the indigency section for the court to appoint counsel to represent him.

At this time the court will designate the matter ready for trial. Since we have no courts available, it will be trailing day by day pending a court.

In the interim, while the case is pending for trial, the court will issue an order that the defendant be held at county jail. While he is at county jail he shall be entitled to pro per privileges until this matter is assigned out for trial.....

APPENDIX D

(Ex. "B", R.T., pp. 19-20, 43-44, B-028776; Proceedings reported June 24, 1983.)

R.T., p. 19:

THE COURT: The reason being is that you have a right to a certain amount of money which appears to be in excess of one hundred thousand dollars; that such asset does not qualify you to be in an indigent status.

R.T., p. 20:

Furthermore, you have the right to assign certain proceeds to secure payment of legal fees, and the court acknowledges that having that right, plus the asset, would give you adequate ability to obtain counsel.

R.T., p. 43:

MR. POST: All I was going to ask the court is if the court would see fit if I gave them the names of ten attorneys, if they would ask one of those attorneys to be

R.T., p. 44:

appointed and then I would sign a promissory note to represent me in this matter.

THE COURT: You should have done that many months ago. The court does not do that kind of activity. It has no business involving itself to appointment of attorneys in civil matters.

APPENDIX D

(Ex. "B", R.T., pp. 38-39, B-028776;
Proceedings reported June 24, 1983.)

R.T., p. 38:

THE COURT: All right, now, I just want to go over the scenario again, that a transcript of the trial in People versus Monte Lee Post, case number A148388 will be deemed to be the evidence, both direct and cross-examination, and would be deemed to have been submitted by stipulation by both parties.

Second, that in addition thereto and not cumulative, each party may call any other witness, including the parties themselves for any other purpose which would be considered by this court; that the court can consider by virtue of judicial notice the pleadings, orders, and papers contained in the People versus Monte Lee Post case; that following all of that, each side may argue the law and

the facts, and thereafter, the matter will be submitted.

To you Mr. Post, for the opportunity to have

R.T., p. 39:

the transcript used by this court, you will waive any objections on the basis of due process, on the basis of lack of counsel, lack of funds to obtain counsel, lack of funds to obtain expert witnesses, and will submit without any objections of any other sort?

I just don't want you to have your cake and eat it, too.

Is that acceptable to you?

MR. POST: Well, I'm trying to think also, your Honor.

I don't wish to waive all those rights. I'm sorry, I'm giving up too much with that.

THE COURT: Well, let's proceed. Let's proceed.

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(Ex. "B", R.T., p. 45, B-028776;
Proceedings reported June 27, 1983.)

R.T., p. 45:

MR. POST: Your Honor, I would like to move for a mistrial based on my denial by this court of due process and of equal protection under the law.

THE COURT: Okay. Motion denied.

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Filed January 29, 1987

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BETTY A. POST, Plaintiff and RESPONDENT, v. MONTE L. POST, and DOES I through XX, inclusive, Defendant and APPELLANT.	2D CIVIL B-020858 APPELLANT'S OPENING BRIEF

ISSUES PRESENTED

1. Whether a law and motion judge, who is not the trial judge, has jurisdiction to deny a defendant's motion to vacate the judgment?

2. Whether a law and motion judge, who refuses to transfer a defendant's motion to vacate the judgment back to the trial judge, is acting in excess of jurisdiction? APPENDIX D

3. Whether a court commissioner has jurisdiction to issue an order, without a stipulation having been signed at the time by the defendant, that will allow a plaintiff to take control of the defendant's assets, and which defendant is being prosecuted in a civil action by the very same plaintiff against whom the defendant must defend?

4. Whether a court commissioner has jurisdiction to order a defendant out of prison, without notice to the defendant, when said defendant did not sign any stipulation for said commissioner to so act, and the civil case, for which the commissioner issued the removal order, had previously been transferred to another judicial district; and whether such action constitutes obtaining the defendant's appearance by extrinsic fraud?

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5. Whether a plaintiff's marital dissolution attorney can obtain a defendant's personal appearance for a civil action, by having the court order a defendant's removal from prison, for marital matters without notice, so that a plaintiff's civil action attorney can obtain defendant's appearances in court without notice, in order to prosecute the civil action against defendant; and whether such action constitutes obtaining the defendant's appearance by extrinsic fraud?

6. Whether, in obtaining a defendant's personal appearance for a trial in a civil action, by the circumstances stated in para. 4 & 5 above, and which defendant is a state prisoner, and because of which, said defendant is chained up by either state correctional officers or local jail

officials when being brought to court, does not in fact, constitute that defendant's personal jurisdiction being obtained by force for a trial in a civil action?

7. Whether a judge could deny a defendant appointed counsel, and later the trial court deny a defendant a trial by jury, when first a court commissioner from the same courthouse, would issue an order to the plaintiff, that would allow the plaintiff to take control of the defendant's assets, and being the very same plaintiff the defendant was to defend himself against, without first holding a hearing pursuant to Gov. Code, section 68511.3, to determine if the defendant could pay the necessary jury fees, or had funds to retain counsel, when the plaintiff had previously denied defendant access to his own funds before

the very same judge, who denied the appointment of counsel?

8. Whether a defendant, who is not a trained attorney, and who had no idea how to present both legal and factual issues for proper judicial consideration, and who was denied both appointed counsel and a trial by jury, could have a full and fair opportunity to defend himself against a plaintiff in the above civil action; and whether such court actions, in para. 7 above, was not in fact a denial of the defendant's fundamental Constitutional right to due process and equal protection under the law?

9. Whether a money judgment, which was obtained by the denial of a defendant's fundamental Constitutional rights to a trial by jury, due process and equal protection under the law, is in fact, valid on its face?

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Filed July 16, 1987

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

MONTE LEE POST, Petitioner, vs. THE SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, JUDGE MARTHA GOLDIN, JUDGE ROBERT M. LETTEAU, Respondents, BETTY A. JAMES, Formerly, BETTY A. POST, Real Party in Interest.	2D CIVIL B-028776 PETITION FOR WRIT OF CERTIORARI AND/OR PROHIBITION AND/OR MANDATE, WITH SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES [C.C.P., sections 1068, 1085, 1103]

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE COURT HAS JURISDICTION AND THE WRIT LIES.

II. THE JUDGMENT AGAINST PETITIONER WAS OBTAINED BY EXTRINSIC FRAUD, THE

DENIAL OF PETITIONER'S FUNDAMENTAL RIGHT TO A TRIAL BY JURY, AND THE RIGHTS OF DUE PROCESS, EQUAL PROTECTION AND ACCESS TO THE COURTS, IN EXCESS OF THE RESPONDENT COURT'S JURISDICTION.

III. THE DENIAL OF PETITIONER'S MOTION TO VACATE JUDGMENT BY A LAW AND MOTION JUDGE WAS A DENIAL OF PETITIONER'S RIGHT OF DUE PROCESS AND IN EXCESS OF THE RESPONDENT'S JURISDICTION.

IV. THE MARITAL DISSOLUTION JUDGE WILL BE ACTING IN EXCESS OF JURISDICTION IN CONTINUING TO ENFORCE THE RESPONDENT COURT'S JUDGMENT.

Filed August 3, 1987

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MONTE LEE POST, Petitioner, vs. THE SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, JUDGE MARTHA GOLDIN, JUDGE ROBERT M. LETTEAU, Respondents, BETTY A. JAMES, Formerly, BETTY A. POST, Real Party In Interest.	NO. S-001859 PETITION FOR REVIEW; MEMORANDUM OF POINTS AND AUTHORITIES [C.R.C., Rule 28 & 29]

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Petitioner, MONTE LEE POST, hereby petitions this Court for review of the ORDER of the California Court of Appeals, Second Appellate District's summary denial of Petitioner's PETITION FOR WRIT

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OF CERTIORARI AND/OR PROHIBITION AND/OR MANDATE, WITH SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES in that courts' Case No. 2D CIVIL B-028776.

Said ORDER was made on July 24, 1987, without opinion and is attached hereto as Exhibit "A", at page 8 hereof.

ISSUES PRESENTED FOR REVIEW

1. Whether this Court will sustain the appellate court's summary denial of a petition for extraordinary relief from a property judgment, if shown therein that said judgment was obtained by extrinsic fraud, denial of a defendant's fundamental Constitutional right to a trial by jury, and the Constitutional denial of defendant's rights of due process and equal protection?

2. Whether a trial court has jurisdiction to enter a judgment when there was no summons issued by the court,

and the defendant's personal appearances was obtained by actual and constructive fraud?

3. Whether a defendant can be denied a trial by jury in a civil liability action, by a marital dissolution court first ordering that the plaintiff in the civil action be given control of all the defendant's assets in the marital dissolution case, and then the trial court in the civil action denying defendant access to those assets with which to pay jury fees, and then denying a trial by jury because defendant could not pay the necessary jury fees?

4. Whether a defendant, who was a state prisoner, can be ordered to appear in a civil liability action, by orders issued predicated upon affidavits signed in a marital dissolution case and made without notice or motion pursuant to

statutes in the civil action, or made by a court commissioner after the case had been transferred to a superior court judge, or when defendant's appearance was based upon an order asserted to have been made by the above same commissioner, which does not even appear in the record?

5. Whether a law and motion judge can summarily deny a defendant's Motion to Vacate Judgment, that was predicated upon the grounds of an incorrect or erroneous legal basis for the judgment that materially affected defendant's substantial rights, without a hearing; nor without ordering the motion transferred back to the trial judge pursuant to California Rules of Court, Rule 236?

6. Whether a marital dissolution judge will be acting in excess of jurisdiction, in enforcing a judgment

that was obtained against Petitioner by extrinsic fraud, denial of Petitioner's fundamental Constitutional right to a trial by jury, and the denials of due process and equal protection?

GROUNDS FOR REVIEW

This petition is made on the grounds of securing the settlement of the above-stated important questions of law and is based upon this petition, the Memorandum of Points and Authorities attached hereto, the record in the Court of Appeals Case No's. 2D CIVIL B-020858 and 2D CIVIL B-028776, and any other evidence the Court may wish to consider at the time set for oral argument, either written or oral.

DATED: August 3, 1987.

Respectfully submitted,

/s/_____
Monte Lee Post, PETITIONER
(In pro per)

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PROOF OF SERVICE BY MAIL

[Supreme Court Rule 28]

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA:

I am a resident of the aforesaid county; I am over the age of eighteen years and I am not a party to the within entitled action; my residence address is:

3637 Snell Ave., # 128, San Jose, California 95136.

On November 23, 1987, I served the within,

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES and MOTION TO VACATE JUDGMENT BELOW,

on the interested parties or their attorney of record in said action, by placing three true copies thereof enclosed in a sealed envelope with first-class postage thereon fully prepaid, in the United States mail at San Jose, California, addressed as shown on the following page:

SEE LIST PAGE 38a

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on November 23, 1987, at San Jose, Calif.

/s/ _____
Signature, Neta F. Keller

Clerk,
California Supreme Court
Room 2450
State Building
450 McAllister Street
San Francisco, CA 94102

Clerk,
California Court of Appeals,
Second Appellate District,
Division Two
Room 301
3580 Wilshire Blvd.
Los Angeles, CA 90010

Clerk,
Superior Court of Los Angeles County
6230 Sylmar Avenue
Van Nuys, CA 91401
(3 copies each for Judges,
Schneider, Letteau & Goldin)

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(Special Master, by appointment
in Sup. Ct. Case No. N.O.D.-10783)

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(Attorney for real party
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No. B-020858)

Betty A. James, formerly
Betty A. Post
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San Carlos, CA 94070
(Real Party in Interest)